
**BZA-1835 & 1836
BLACK SWAN ENTERPRISES, LLC
Special Exception and Variances**

**STAFF REPORTS
May 17, 2012**

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REQUEST MADE, PROPOSED USE, LOCATION:

Petitioner represented by Skip Sturgeon, with consent of owner and legal counsel Joseph Bumbleburg, is requesting a special exception to permit peat mining (SIC 1499—mining of non-metallic minerals) in the A zone. Seasonal mining will occur 7 a.m. to 7 p.m. Monday through Saturday for a period of twenty years from the date of approval; reclamation will begin when active mining is complete.

Two variances for the proposed operation are also on this agenda (BZA-1836). The property is located where CR 50W ends at CR 790N (about ½ mile west of I-65), more commonly known as 7910N CR 50W in Tippecanoe 18 (NW) 24-4. (UZO 3-2). This project has been put on hold since summer 2011 to resolve issues with coordinating agencies like the Army Corps and IDEM. This is petitioner's final continuance. If the case is not heard at the May 23, 2012 meeting, petitioner must refile the request.

AREA ZONING PATTERNS:

The subject property and all surrounding properties are zoned A, Agricultural.

AREA LAND USE PATTERNS:

The property is currently undeveloped, comprised mainly of scrub grass, reeds and ponds at the western property line and far northeastern corner; the latter is where petitioner has indicated mining activity.

In 1973, the Koehler Brothers were approved for a peat mining operation on this same site (BZA-183). At that time, the mining was focused on the western edge of the site; in petitioner's current proposal mining is located in the northeast corner of the property. A dragline was installed to remove material, excavated peat was dried on the hillside and then taken to the Koehler Bros. site on SR 26 and sold.

TRAFFIC AND TRANSPORTATION:

The subject property is located at the end of CR 50W where CR 790N tees to the east. A 12' farm field gravel drive extends north from CR 50W providing access. Commercial driveway improvements must be approved by the County Highway Department. Traffic on this stretch of CR 50W is minimal; seven homes along 50W and 790N use this portion of 50W as primary access.

Parking requirements for this use are one space per employee on the largest shift. Petitioner has indicated a workforce of 3-8 employees. Parking is not delineated on the

site plan, but there is ample room on this 50+ acres for the required parking near the existing pole barn on site; parking in the A zone does not have to be paved.

ENVIRONMENTAL AND UTILITY CONSIDERATIONS:

This property has an interesting history with the interstate, previous peat mining operation, wetlands and legal drains. This property is part of the National Wetlands Inventory (wetlands codes PEMC, PEMF, PUBFX and PFO/SS1C), rich in organic material suitable for peat mining—as evidenced by the previous operation at this site.

The Delphine-Anson legal drain, cut in-half by I-65 to the east, runs along the north edge of this property to CR 100W. According to the County Surveyor, there is also a county tile that runs parallel with CR 50W and continues through the wetland portion of this property. This tile has gone through cycles of use and disrepair through the years. Conversations with a representative from the Soil and Water Conservation District indicate that I-65 caused disruption to the Delphine-Anson legal drain, creating the original wetland area at this site; the peat mining operation in the 70s and the properly working tile dried out the wetlands. In the 1980s, the tile broke, recreating the wetlands. The property owners in the area at that time asked the County Surveyor's office to repair the tile, done in accordance with applicable requirements, which again drained the wetlands. However, in the meantime the US Fish and Wildlife Service designated this area as part of the national wetlands.¹

Three agencies have jurisdiction over wetlands: the USDA (Department of Agriculture), Army Corps of Engineers and IDEM (Indiana Department of Environmental Management). In this case, the USDA won't have any interest because there is not a crop production component on the property and the USACE will not have jurisdiction because there is no navigable body of water involved petitioner has submitted a letter of non-jurisdiction. IDEM, which has jurisdiction over wetlands under Section 401 of the Indiana Isolated Wetlands Law, may require a permit.

Petitioner has submitted a wetland delineation report to staff indicating, by the presence of wetland vegetation, hydrological indicators and hydric soils, there are wetlands on the subject property and "it is likely that a mitigation plan will be necessary to offset any peat mining." However, petitioner's reclamation plan states that mining will be in compliance with IDEM's recommendation of a one-step mining process which will exempt them from full compliance in the form of a mitigation plan.

Additionally, petitioner must get Drainage Board approval for disturbance of greater than an acre of ground and any issues involving the legal drain or county tile. Petitioner does have plans to reroute and redesign the existing Henderson branch of the legal drain tile with coordination of the Drainage Board and County Surveyor's office.

¹ By the County Surveyor's estimation nearly all of Tippecanoe County was a wetland, but with installation of drains and tiles, lands dried out and development was possible. It is understandable then, that when a tile breaks, wetlands reform. The US Fish and Wildlife Service estimates that from 1780-the mid1980s, 85% of the wetlands in the state of Indiana were drained.

STAFF COMMENTS:

The nature of peat mining involves extracting organic material from a bog or wetland. Typically, when peat mining is completed, a pond results and the wetlands are destroyed. Petitioner is proposing peat mining for a period of at least twenty years.

Petitioner intends to employ a one-step peat mining process so that a full mitigation plan will not be required by IDEM; the Army Corps of Engineers has provided a letter of non-jurisdiction, and the County Surveyor has been consulted on drainage issues, though full Drainage Board review may still be required.

Active mining may last up to twenty years, commencing after approval, depending on demand. Proposed hours of operation are 7 a.m. until 7 p.m., Monday through Saturday with no outdoor lighting shown so all work will be conducted during daylight hours. Expected noise is consistent with surrounding agricultural uses and any increase in traffic will be negligible on this lightly traveled, dead-end portion of CR 50W. Any traffic entering on the busier portion of CR 50W (the petition anticipates an additional ten vehicles per day) will not significantly impact this secondary arterial.

Per the UZO Section 4-11-4: The petitioner shall formulate a Reclamation Plan **as part of its submission** to the ABZA for grant of special exception. This plan shall be coordinated with and guided by the instructions of the Indiana Department of Environmental Management for compliance with 327 IAC 15-6, Rule 6 or its successor and through the County Drainage Board for compliance with 327 IAC 15-5 Rule 5 or its successor with regard to soil erosion and sediment control and also compliance with the County's Storm Water Ordinance.

Grading and backfill of the pond will meet ordinance requirements; the UZO requires a finished slope of at least 3:1, the site plan indicates a 10' maintenance ledge followed by slopes of 12:1, 6:1 and finally 3:1 at the bottom of the 13' deep pond. Petitioner will landscape any slopes with appropriate native wetland species.

All 100' open use setbacks are shown, however petitioner is requesting variances to eliminate the fencing and Type C bufferyard requirements (on this agenda, BZA-1836). If those variances are not approved, petitioner must submit a new site plan indicating UZO compliance before applying for an Improvement Location Permit.

Regarding the ballot items:

1. Section 3.1 of the Unified Zoning Ordinance **DOES** authorize the special exception for this use (SIC 1499, mining of non-metallic minerals) in the A zoning district.

And it is staff's opinion that:

2. If the variances in BZA-1836 are approved (to eliminate the required 20' bufferyard and to eliminate the 6' fencing requirement on the north, east and west sides of the mining operation), the requirements and development standards for the requested use as prescribed by the Unified Zoning Ordinance **WILL** be met. Petitioner has submitted a reclamation plan that meets conditions of UZO 4-11-4 and all open use setbacks are shown (including the area indicated for stockpiling of materials).
3. The sensitive nature of this wetland area has necessitated that the reclamation plan be created with the guidance of the Army Corps of Engineers, IDEM and the County Surveyor's Office. Because those agencies have provided input on this project, granting the special exception **WILL NOT** subvert the general purposes served by the Ordinance.
4. Granting the special exception **WILL NOT** materially and permanently injure other property or uses in the same district and vicinity because of:
 - a. Traffic generation: traffic generated by this use will be comprised of employees (as many as 8 per day) and up to 10 deliveries a day. The increased traffic will have no negative impact on an already well-traveled portion of CR 50W, and the site's location where the road ends will impact very few residences;
 - b. Placement of outdoor lighting: no outdoor lighting is shown other than security lights; all work will be conducted during daylight hours;
 - c. Noise production: noise created by trucks and equipment will be similar to agricultural equipment; and
 - d. Hours of operation: 7 a.m. through 7 p.m. Monday through Saturday are reasonable hours of operation for this rural area.

STAFF RECOMMENDATION:

Approval, with the following conditions:

1. Petitioner must receive a driveway permit from County Highway;
2. A new site plan must be submitted showing both delineated parking and the limits of the proposed fence along CR 50W;
3. Drainage Board compliance, if necessary;
4. If the variances in BZA-1836 *are not* approved, petitioner must also submit a new site plan that shows compliance with UZO 4-9-7(c)(1) and 4-9-7(d).